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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,283	08/23/2001	Thomas Shilale	81715CIP	2132
23685	7590	12/20/2004	EXAMINER	
KRIEGSMAN & KRIEGSMAN 665 FRANKLIN STREET FRAMINGHAM, MA 01702			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/938,283

Applicant(s)

SHILALE ET AL.

Examiner

Jila M Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-37, 41, 42 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-37, 41, 42 and 44-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2004 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-37 and 41-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bone (4,039,078) and Mori et al. (6,433,106). Bone '078 discloses a length of continuously connected fastener stock comprising: a first and second side members (60A and 60 B); and a plurality of cross-links (60C) interconnecting said first and second side members. The side members have an augmented transverse cross-sectional size. Bone '078 discloses (column 6, lines 17-21 and lines 29-35) that the side members and the cross-links may take many forms such as oval, triangular, octagonal, circular, etc. See Figures 1-9 embodiments. Bone '078 does not appear to teach the specific shape of the fasteners and the process of using Rotary molding. As

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admitted by applicant cross-links that have both a flat surface and an arcuate surface are well known in the art. (Figures 1-6 embodiment of the instant application).

Therefore, with respect to the shape and size of the side members and cross-links it would have been an obvious matter of design choice to modify the shape and size of the side members and cross-links in view of the teaching of Bones '078 and since such a modification would have involved a mere change in shape and size of a component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claims 11-18, the determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 946, 966 (Fed. Cir. 1985).

A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. Products by Process claims are NOT limited to manipulations of the recited steps only to the structure implied by the steps.

Furthermore, Mori '106 teaches that rotary molding of plastics is a known alternative to injection molding, blow molding, extrusion molding, or other molding processes, see column 6, lines 43-57. Therefore, even if "rotary molding" results in

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different structural characteristics of the end product than other molding methods, it still would have been *prima facie* obvious at the time the invention was made to use "rotary molding" in Bone '078 as claimed since Mori '106 teaches that "rotary molding" is recognized as a useful technique for forming plastics.

### ***Response to Arguments***

4. Applicant's arguments filed January 26, 2004 have been fully considered but they are not persuasive. As admitted by applicant cross-links and side members that have both a flat surface and an arcuate surface are well known in the art. (Figures 1-6 embodiment of the instant application).

Therefore, with respect to the shape and size of the side members and cross-links it would have been an obvious matter of design choice to modify the shape and size of the side members and cross-links in view of the teaching of Bones '078 and since such a modification would have involved a mere change in shape and size of a component. A change in shape and size is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) and *In re Rose*, 105 USPQ 237 (CCPA 1955).

Contrary to applicant's argument the side members of Bone '078 due in fact have an augmented transverse cross-sectional size.

Products by Process claims are NOT limited to manipulations of the recited steps only to the structure implied by the steps. Applicant has not come forward with evidence establishing an unobvious difference between the claimed product and the

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prior art product. A statement or argument by the attorney is not factual evidence. See MPEP 716.01.

As a practical matter the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtains prior art products and makes physical comparisons therewith. *In re Brown*, 173 USPQ 685, 688 (CCPA 1972).

### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are references analogous to applicant's instant invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

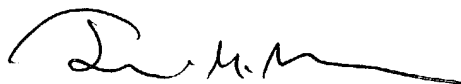
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**JILA M. MOHANDESI  
PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'J. M. Mohandesi', written in a cursive style.

Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
December 16, 2004